MALAYSIAN REPORTS

GOVERNMENT OF MALAYSIA v. IZNAN BIN OSMAN

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) and Wan Hamzah J.) March 8, 1975]
[Ipoh — Federal Court Civil Appeal No. 114 of 1973]

Administrative Law — Dismissal of police constable by Chief Police Officer — Purported delegation of powers by Police Force Commission — No delegation of power to appoint — Dismissal by Chief Police Officer void and of no effect — Federal Constitution, arts. 135(1) & 140(1).

Constitutional Law — Public services — Restriction on dismissal and reduction in rank — Federal Constitution, arts. 135(1) & 140(1).

This was an appeal from the decision of Sharma J. (*sub nom Isman bin Osman* v. *Government of Malaysia* [1973] 2 M.L.J. 143). The respondent, a police constable, had been convicted of the offence of permitting his car to be used as a public service vehicle without a licence and after his conviction he was informed that his dismissal was contemplated and he was told that if he wished to make representations he should do so in writing to the Chief Police Officer. The respondent sent in a letter asking that he be re-employed but the Chief Police Officer decided to dismiss him. The Chief Police Officer purported to act under the powers given by the Police Force Ordinance. The Police Force Commission had purported to delegate its functions under Article 140(1) of the Constitution to the Chief Police Officer. The respondent applied for a declaration that his dismissal was void and inoperative and that he was still a member of the Police Force. Sharma J. held that the dismissal by the Chief Police Officer was null and void and inoperative. The appellant appealed to the Federal Court.

Held, dismissing the appeal: as it was not shown that the Police Force Commission had delegated the power to appoint constables to the Chief Police Officer, the purported dismissal of the respondent by the Chief Police Officer was contrary to the prohibition in Article 135(1) of the Federal Constitution and therefore void.

Cases referred to:-

(1) *Government of Malaysia* v. *Lionel* [1974] 1 M.L.J. 3 at p. 5.

(2) *B. Surinder Singh Kanda* v. *The Government of the Federation of Malaya* [1962] M.L.J. 169.

(3) *Amalgamated Union of Public Employees* v. *Permanent Secretary (Health) & Anor.* [1965] 2 M.L.J. 209.

(4) *Haji Ariffin* v. *Government of Pahang* [1969] 1 M.L.J. 6.

(5) *Dukhuram Gupta* v. *Co-operative Agricultural Association Ltd., Kawardha & Ors.* A.I.R. 1960 Madhya Pradesh 273, 277 and 278.

FEDERAL COURT.

Abu Talib bin Osman (Senior Federal Counsel) for the appellant.

G. T. Rajan for the respondent.

Suffian L.P.: This matter has troubled me a great deal, but after anxious consideration I have decided to respectfully agree with my Lord the Chief Justice of Borneo that this appeal be dismissed with costs.

Wan Hamzah J. also agrees that this appeal be dismissed with costs.

The main question here is, did the Chief Police Officer, Perak, have power to dismiss the plaintiff constable?

The law, as I see it, is as follows.

The Police Force Commission are the primary authority with power to appoint and dismiss members of the Police Force, see clause (1) of article 140 of the Constitution. But under clause (6)(b) the Commission may delegate this power to a Chief Police Officer.

If the Commission delegate the power to appoint and dismiss a constable to a Chief Police Officer, the Chief Police Officer may appoint *and* dismiss.

If they delegate only the power to dismiss, not power to appoint, the Chief Police Officer cannot dismiss, because he is subordinate to the Police Force Commission and article 135(1) says that no constable may be dismissed by an authority subordinate to the authority which, at the time of the dismissal, has power to appoint a constable.

On the contrary if federal law or regulations made by the Yang Dipertuan Agung under clause (5A) of article 144 empower a Chief Police Officer to dismiss a constable, the Chief Police Officer may validly dismiss him, even if the Chief Police Officer is not empowered to appoint a constable. The words "notwithstanding the provisions of clause (1) of article 135" in that clause are the authority for that proposition. But for these words, the Chief Police Officer may not validly dismiss unless he is empowered to appoint also.

These words appear also in clause (5A)(i) of article 144, so that a board appointed by the Yang Dipertuan Agung under that clause may validly dismiss a member of the service who is within the jurisdiction of the Public Service Commission or the Education Service Commission, though the board is regarded as subordinate to the Public Service Commission or Education Service Commission and has no power to appoint an officer of equal rank.

Such being the law, what are the facts? The defendant Government sought to prove that the Police Force Commission had delegated the power to dismiss constables to the Chief Police Officer. The defendant should also have sought to prove that the Police Force Commission have also delegated to the Chief Police Officer power to appoint a constable. That they did not do, and so it must be assumed that the Police Force Commission have not delegated to a Chief Police Officer power to appoint a constable. In the absence of such power, the purported dismissal of the plaintiff by the Chief Police Officer is contrary to the prohibition in article 135(1) of the Constitution and therefore void.

In the course of his lengthy judgment the learned trial judge made many observations on the law. With respect I do not agree with him that, as the Chief Police Officer was not conscious of the existence of the delegation in dismissing the respondent, this affected the validity of the dismissal. With respect I agree with the learned Chief Justice, Borneo, that the important thing is, did the Chief Police Officer have such power under the delegation?

With respect I do not agree with the learned trial judge that the delegation was invalid because it was signed by six members of the Commission. In fact, the Commission had only six members at the time the delegation was signed. The learned trial judge was misled into thinking that it had eight members, probably because he was referred to the pocket edition of the Constitution. Counsel who appeared before us also referred us to that edition. Reference to the text of the Constitution as it existed at the time of the

delegation showed that then the Commission had only six members.

I refrain, however, from expressing any views on other aspects of the law mentioned by the learned trial judge, not because I agree or disagree with them, but because any remarks I may make would be obiter.

Lee Hun Hoe C.J. (Borneo): This appeal is mainly concerned with the question whether or not the dismissal of a police constable by the Chief Police Officer, Perak, was void. The pleadings were formulated in such a way that they had given me some difficulty. This is one case where it is not easy to express one's views on the pleadings with confidence. Somehow, I have managed to grope my way out of the darkness and come to the conclusion, with diffidence, that the learned judge was right in this case.

Respondent was appointed a police constable on June 1, 1961 on contract by the Commandant, Federal Police, Kuala Lumpur. He owned a car No. PA 4487. He was charged before the Magistrate's Court, Ipoh, for permitting his car to be used on March 12, 1966 as a private taxi and without being covered by a policy of insurance under section 92(ii) and 74(ii) respectively of the Road Traffic Ordinance, 1958. On April 19, 1967 he was convicted on both charges and fined $1,000. Three days after his conviction the Chief Police Officer wrote and informed him that he was suspended from duty without pay from the date of his conviction. After his appeal against conviction was dismissed by the High Court the Chief Police Officer wrote him another letter on September 7, 1967 informing him that his dismissal from the police force was contemplated because of his conviction and advising him that he could make representations in writing within 14 days on receipt of the letter. On September 19, 1967 respondent submitted his written representations giving his explanation maintaining his innocence. Finally, by a letter dated November 11, 1967 the Chief Police Officer notified respondent that after considering all the facts regarding the incident he had decided to dismiss him from the police force with effect from the date of his conviction in accordance with the powers conferred on him vide the 1st Schedule to the Police Ordinance, 1952. Respondent was advised that he could appeal to the Commissioner of Police regarding the dismissal under section 15(2) of the Police Regulations, 1952 which he did but his appeal was rejected and the dismissal confirmed. Consequently, respondent sued appellant for a declaration that his dismissal was void and inoperative and that he was still a member of the police force. Appellant denied that the dismissal was wrongful and maintained that it was in accordance with law and procedure. The late Sharma J. gave judgment in favour of respondent and appellant appealed to this court.

It is true that respondent stated the various grounds in which the alleged dismissal was wrongful but had not specifically challenged the competency or authority of the Chief Police Officer in dismissing him. However, going through the pleadings, my impression is that they are sufficiently wide to put the appellant on the alert to show that the Chief Police Officer had in fact authority and was competent to dismiss respondent. This accounts for the fact that the appellant sought to show that power was delegated to the Chief Police Officer by the instrument of delegation (see page 103 of the Appeal Record and marked Exh. D3 in the High Court). This instrument was signed by six members of the Police Force Commission delegating their powers under Article 140(6)(b) in the following terms:—

"FEDERAL CONSTITUTION
Delegation under Article 140(6)(b)

In accordance with Article 140(6)(b) of the Federal Constitution, the Police Force Commission hereby delegates its functions under Article 140(1) in respect of members of the Police Force, other than Gazetted police officers, to the Commissioner of Police and to other police officers or boards of police officers so as to be exercised as specified in the Police Ordinance, 1952, and in the rules, regulations and standing orders made or purporting to have been made thereunder.

Dated this 9th day of April, 1962."

I consider that once the question of wrongful dismissal was put in issue, appellant would have to show that the Chief Police Officer was acting within his authority and had the power to dismiss respondent. By paragraph 3 of the defence, appellant averred that the respondent's dismissal from the police force was proper and in accordance with law and procedure. To my mind, law would include the Constitution. The reason is that under the Constitution the Police Force Commission normally has the exclusive power of appointment and dismissal. (See Articles 140 and 144 of the Constitution). The Commission may, of course, delegate its various functions to any of its members, the Commissioner of Police, other police officers or boards of police officers.

Respondent alleged that the dismissal was not only wrongful but void and inoperative. If appellant was not certain on any point arising out of the pleadings he was entitled to ask for further and better particulars, but he did not do so. I do not think appellant was in any way taken by surprise judging by the manner the defence was conducted. How the appellant was going to show that the Chief Police Officer had the power of dismissal was simply a matter that must be left in his hands. Appellant tried to do this by relying on the instrument of delegation (Exh. D3) made in 1962.

Prior to August 31, 1957 the Commissioner of Police had the power to appoint a police officer under section 9(3) of the Police Ordinance, 1952. However, after Merdeka, with the promulgation of the Federal Constitution the various public services came under the jurisdiction of various commissions. A Police Service Commission was set up with jurisdiction and responsibility over all members of the police force. I may add that when Article 140 was amended by Act 10 of 1960 with effect from April 1, 1961 the Police Service Commission was replaced by the Police Force Commission. Article 140(1) of the Constitution provides that:—

"140(1) There shall be a Police Force Commission whose jurisdiction shall extend to all persons who are members of the police force and which, subject to the provisions of any existing law, shall be responsible for the appointment, confirmation, emplacement on the permanent or pensionable establishment, promotion, transfer and exercise of disciplinary control over members of the police force."

It was never in dispute that as a police constable, the respondent's terms and conditions of service were

governed by the Police Ordinance, 1952 (until it was superseded by the Police Act, 1967), rules and regulations made thereunder, standing orders and general orders in so far as they were applicable and the Constitution. The Police Act, 1967 came into force on August 29, 1967. Article 4 of the Constitution provides in no uncertain terms that the Constitution is the supreme law of the Federation and any law which is inconsistent with the Constitution shall, to the extent of the inconsistency, be void.

For the general control, direction and information of the police force, the Commissioner of Police (now known as the Inspector-General of Police) had issued administrative orders, commonly known as "Commissioner's Standing Orders." These were made under section 82 of the Police Ordinance, 1952 and not under Cap. D as alleged by the respondent whose allegation was accepted by the learned judge. The version of Cap. D with which this appeal is concerned refers to Cap. D of 1956 (L.N. 432 of 1956) which was made under Clause 14(4) of the Federation of Malaya Agreement. Hence, there could be no question of the Commissioner's Standing Orders being *ultra vires* Cap. D. The learned judge was, therefore, wrong on this.

It was contended that the Police Act, 1967 did not affect the Commissioner's Standing Orders by virtue of section 98 of the said Act. Therefore, it was argued that the action to dismiss the respondent was perfectly in order under the Commissioner's Standing Orders Part A 205 paragraph 7 to 9 (Exh. D2 at page 104 of Appeal Record) which read as follows:—

"7. If a superior police officer, subordinate police officer or constable is convicted of a criminal charge the Commanding Officer concerned may call for a copy of the relevant proceedings in the criminal court or for a report by the Legal Department on this proceedings and if, after consideration of the said proceedings or report, the Commanding Officer is of the opinion that the officer should be dismissed or otherwise punished on account of the offence of which he has been convicted, the Commanding Officer shall issue to the officer a letter on the following lines:

'I have to inform you that your dismissal from the service is contemplated on the grounds that on... in the... Court... you were convicted of the following criminal charge and were sentenced to....

(state the criminal charge)

....

2. Any representations you wish to make should be submitted in writing and addressed to me within 14 days of the delivery to you of this letter.'

8. For the purposes of this Order, the terms 'convicted' or 'conviction' include a finding or an order involving a finding, by a criminal court that the officer charged has committed a criminal offence.

9. The Commanding Officer shall, after considering the officer's representations, if any, order that the officer be dismissed, or otherwise punished, without any of the disciplinary proceedings prescribed in section 45 of the Police Ordinance, 1952, and in Part 1 of the Police Regulations, 1952. Provided that no punishment, other than those specified in the first Schedule to the Police Ordinance, 1952, shall be imposed."

It is only fair to point out that the Chief Police Officer had never claimed to act under delegation of power from the Police Force Commission but rather under the Police Ordinance, 1952. During cross-examination he was emphatic that he was acting under the Commissioner's Standing Orders Part A 205 to which reference had been made previously. He also mentioned that the provisions of Exh. D2 were basically the same as those of General Orders Cap. D, paragraph 40 (See P.U. 290/68). He was aware of the delegation of power, but did not address his mind to it. There was no right of appeal under the Standing Orders or the General Orders other than to the dismissing authority itself.

There is no question in this case that the Chief Police Officer terminated the services of the police constable as in the case of *Government of Malaysia* v. *Lionel*.[1] In that case respondent was appointed a temporary clerk interpreter in 1953 with the Police Clerical Service on a contract which incorporated the right of either party to terminate the contract. In 1962 disciplinary action was taken against him for breaches of discipline. He failed to exculpate himself. So, the Chief Police Officer proceeded to terminate his services. His appeal to the Public Service Commission for reconsideration also failed. In 1966 he sought a declaration that his purported dismissal by the Chief Police Officer was void, inoperative and of no effect. The High Court dismissed the action but the Federal Court allowed his appeal. The Privy Council set aside the order of the Federal Court and restored the judgment of the High Court. In the course of delivering the judgment of the Board, Viscount Dilhorne observed:—

"Under English law a servant may be summarily dismissed for disobedience to orders or misconduct or may have his employment terminated by notice or the payment of wages in lieu of notice. Under the laws of Malaysia a similar distinction between dismissal and termination of services appears to exist and in their Lordships' opinion there is nothing in the Constitution which affects the right of the Government to terminate temporary employment in accordance with the terms of the engagement."

Reference to *B. Surinder Singh Kanda* v. *The Government of the Federation of Malaya*[2] was made. There, it was held that since Merdeka the Police Service Commission and not the Commissioner of Police had power to appoint and dismiss members of the police service and that appellant's dismissal by the Commissioner was, therefore, void. In that case there was no agreement that the appellant's services could be terminated by notice and no question with regard to such termination arose. The only question was whether or not the dismissal was valid. The same may be said of the case under appeal. No question of termination arose.

The Privy Council has also, in effect, corrected an erroneous impression created by H. T. Ong, then Chief Justice, that Article 135 guaranteed public servants a security of tenure. Article 135 provides that a dismissal can be effected by an authority with power to appoint a member of that service of equal rank, provided that such member is given an opportunity of being heard. In this case the learned judge quite rightly held that respondent had been given a reasonable opportunity of being heard. The Privy Council pointed out that under the Constitution public servants could expect a degree of security of tenure of their appointments. This proposition of law is not new but has been accepted by Winslow, J. in *Amalgamated Union of Public Employees* v. *Permanent Secretary (Health) & Anor*[3] and by Suffian F.J., as he then was, in *Haji Ariffin* v. *Government of Pahang*.[4] The decision of the Privy Council in *Government of Malaysia* v. *Lionel*[1] would seem to attach equal importance to the terms of a contract and constitutional safeguards.

So that in a matter of misconduct the Government has the option either to terminate the service in accordance with the terms of the contract or to dismiss. The result is that if the Government chooses to terminate then Article 135 would seem to have no application.

It was contended by respondent that the dismissal should date from the time of dismissal, that is, November 11, 1967 and not from date of suspension, that is April 19, 1967 which was also the date of his conviction. In other words, dismissal cannot be retrospective. In *Dukhuram Gupta* v. *Co-operative Agricultural Association Ltd., Kawardha and Others*[5] the petitioner was the Manager of the respondent Association. On March 19, 1955 an order was made by the Secretary of the Association suspending him from service. On July 20, 1956 he challenged the validity of the order of suspension. Bhutt J. set aside the order. The respondent Association filed an appeal. While the appeal was pending the petitioner was dismissed by the committee of the respondent Association and approval was subsequently given by the Joint Registrar who was invested with all the powers of the Registrar. The Divisional Bench, consisting of Hidayatullah C.J. and Tare J. holding that the suspension order having now merged in the order of dismissal the order made by Bhutt J. became inoperative and must be discharged. However, they gave petitioner liberty to challenge the order of dismissal as well as the suspension order. On appeal, it was held that the Joint Registrar was not competent under the Bye-law to accord approval to the resolution of the Managing Committee dismissing the petitioner. Consequently, the dismissal was illegal. It was in regard to the discussion concerning the suspension order and order of dismissal that I am particularly interested. Dixit C.J. made the following observations which may, with respect, very well be adopted:—

"It would suffice to say that to us it appears that the applicant's suspension was clearly one made pending an enquiry. That 'suspension' is an implied incidence of removal, and an employee can be suspended pending final determination of the charges was recognized by the Supreme Court in *Om Prakash Gupta* v. *State of Uttar Pradesh*, (S) AIR 1955 SC 600.

The order of suspension lapsed with the order of the petitioner's dismissal. The suspension order is not revived with the declaration that the order of dismissal is illegal. The contention that if the order of dismissal was legal it could not be made effective from the date of the order of suspension is not sound. If an employee is suspended pending an enquiry into certain charges against him and if as a result of the enquiry an order of dismissal is passed against him, then as observed by the Supreme Court in (S) AIR 1955 SC 600 *(supra)*. 'the order of dismissal replaces the order of suspension,' which then ceases to exist.

The word 'replaces' is very significant and leads to the conclusion that in such a case the order of dismissal would be effective from the date of the order of suspension. After all, the practical importance of the date of effectiveness of an order of dismissal is with regard to the claim for salary or wages during the period of suspension. In *District Council Amraoti* v. *Vithal Vinayak Bapat*, AIR 1941 Nag 125: ILR (1942) Nag 343, it was held that if the dismissal of a servant is justified, then he is not entitled to his wages or salary during the period of suspension preceding his dismissal.

Thus where an employee is ultimately found guilty of the charges and is dismissed from service, he is not entitled to salary for the period of his suspension and his dismissal is regarded as operative from the date of his suspension."

However, it is the appellant's case that the Chief Police Officer derived his power of dismissal under the instrument of delegation (Exh. D3). With respect, I cannot bring myself to agree with the view of the learned judge that as the Chief Police Officer was not conscious of the existence of the delegation in dismissing respondent this affected the validity of the dismissal. I do not think it is necessary to decide whether the Chief Police Officer had directed his mind to the delegation so long as it could be shown that he had such power under the delegation at the time. The question is, of course, whether the Police Force Commission had delegated such power to the Chief Police Officer.

The learned judge was impeccable in his analysis of the law when he stated that under the Constitution the Commissioner may delegate his power of dismissal to the Chief Police Officer subject to the overriding proviso of Article 135(1) which provides in effect that no police constable shall be dismissed by an authority subordinate to that which at the time of the dismissal has power to appoint a police constable. By this it must not be taken that I agree with his many observations on the law. I need not go into them all as they are not necessary for the purpose of this judgment.

On the question of validity of the delegation (Exh. D3) it is now quite clear the learned judge was wrong to hold that the delegation was invalid by reason of the fact that six instead of eight members signed it. Fresh evidence allowed to be introduced before the hearing of the appeal clarified the confusion. At the time the Commission had under the Constitution as it then existed only six members not eight, so that the delegation was in order.

I doubt very much if appellant could be in a position to show that the Chief Police Officer had the power to appoint a police constable at the time of dismissal. Appellant could do no more than by introducing the instrument of delegation (Exh. D3). Any delegation of power to dismiss without delegating the power to appoint would result in breach of the Constitution. Under section 9(3) of the Police Ordinance, 1952 the Commissioner of Police has expressly been given the power of appointment. Even if the Commissioner of Police could delegate his power of appointment to the Chief Police Officer such delegation would be void. Thus, in *B. Surinder Singh Kanda* v. *The Government of the Federation of Malaya*[2] the dismissal of Inspector Kanda by the Commissioner of Police was held to be void by the Privy Council inspite of the fact that the Commissioner of Police had the power of appointment. Since Merdeka the exclusive powers of appointment and dismissal rest with the Police Force Commission. So that there could not be two authorities having similar powers of appointment without conflicting with the provisions of the Constitution. Where there is a conflict the Constitution prevails. The Chief Police Officer cannot be in a stronger position than the Commissioner of Police. The delegation (Exh. D3) states that "the Police Force Commission delegates its functions under Article 140(1)." At a glance this would seem to be sufficiently wide to include the delegation of the powers of appointment and dismissal. But, I do not think the legislature intended to permit the Police Force Commission to delegate its powers under Articles 140(6)(b) or Article 144(6) in such a manner as to conflict with Article

135(1). I say this because the intention of the legislature is clearly reflected by the omission of the words "notwithstanding the provisions of clause (1) of Article 135" from Articles 140(6)(b) and 144(6). These words, however, appear in Clauses (5A) and (5B) of Article 144. The insertion of those words is significant because the person given the power under such a delegation may dismiss a public servant even though he has no power to appoint an officer of equal rank.

Unless the powers of appointment could be delegated or unless those words mentioned earlier were inserted in a particular Clause then it would be no use for a delegatee to be conferred with the power of dismissal. Since the Chief Police Officer is clearly an authority subordinate to the Police Force Commission with whom lies the power of appointment at the time of dismissal, the exercise of the power of dismissal by the Chief Police Officer must necessarily be void and ineffective. On this aspect of the matter I would refer to what Lord Denning said in *Kanda's* case[2]: —

"It appears to their Lordships that, in view of the conflict between the existing law (as to the powers of the Commissioner of Police) and the provisions of the Constitution (as to the duties of the Police Service Commission) the Yang Dipertuan Agung could himself (under Article 162(4), have made modifications in the existing law within the first two years after Merdeka Day. (The attention of their Lordships was drawn to modifications he had made in the existing law relating to the railway service and the prison service). But, the Yang Dipertuan Agung did not make any modifications in the powers of the Commissioner of Police, and it is too late for him now to do so. In these circumstances, their Lordships think it is necessary for the court to do so under Article 162(6). It appears to their Lordships that there cannot, at one and the same time, be two authorities, each of whom has a concurrent power to appoint members of the police service. One or other must be entrusted with the power to appoint. In a conflict of this kind between the existing law and the Constitution, the Constitution must prevail. The court must apply the existing law with such modifications as may be necessary to bring it into accord with the Constitution. The necessary modification is that since Merdeka Day it is the Police Service Commission (and not the Commissioner of Police) which has the power to appoint members of the police service. And that is just what has happened."

His Lordship continued:—

"Their Lordships do not overlook the argument of the Government that there was no conflict. The jurisdiction of the Police Service Commission, they said, would be satisfied by entrusting them with the power to appoint gazetted police officers, leaving the Commissioner of Police to appoint all others. Their Lordships cannot accede to this argument. Under Article 140 the jurisdiction of the Police Service Commission extends to all persons who are members of the police service: and their functions under Article 144 apply to all of them also. The Commission has the duty and therefore the power, to appoint all members of the police service, and not merely the gazetted police officers. The Police Service Commission can, of course, delegate any of its functions under Article 144(6) but still it is its own duty and its own power that it delegates. It remains throughout therefore the authority which has power to appoint, even when it does it by a delegate."

The judgment of the Privy Council was delivered on April 2, 1962. It is possible that as a result of that case the Police Force Commission made the delegation (Exh. D3) which was dated April 9, 1962, a week after the Privy Council's decision. Therefore, to give the Chief Police Officer the power of dismissal, it is necessary to pray in aid the delegation (Exh. D3) as was done in this case. But, it is my view that the delegation (Exh. D3) has been superseded by a later delegation.

The learned judge would have been on firmer ground if he had stated that the delegation (Exh. D3) was invalid because it was superseded by a later delegation. This is precisely the position in this case. I may point out that delegation (Exh. D3) was in fact superseded by a later delegation. It seems to me that at page 107 of the Appeal Record another instrument of delegation was signed by a minimum number of six members as provided by the Constitution on September 16, 1963 coinciding with the formation of Malaysia. This instrument was couched in a different manner in these terms:—

"In accordance with Article 140(6)(b) of the Federal Constitution, the Police Force Commission hereby delegates its functions under Article 140(1) to the extent set forth in Schedule 'B' to this instrument of delegation to be exercised in accordance with the provisions of Schedule 'B' by the officers, board of members of the Commission or boards of police officers specified therein. The composition of the boards specified in Schedule 'B' shall be in accordance with Schedule 'A' to this instrument of delegation.

Dated this Sixteenth day of September, 1963."

At least one of the six members of the Police Force Commission in 1963 was not a member in 1962. I do not think it is possible for appellant to argue that both instruments were in force at the same time. The position is clear. The 1963 delegation must be taken to have put the 1962 delegation out of action. Any other interpretation would create mischief. I do not think the Police Force Commission intended to contradict itself. Since the two instruments are repugnant, it is right to apply the well known rule of construction that the last must prevail. A perusal of the 1963 instrument of delegation would show that it is more elaborate and mentions the various functions delegated to various Boards. It does not appear that the instrument delegates any power to any individual. Hence, it is not possible to read in this instrument any delegation of power to the Chief Police Officer. As I mentioned previously the appellant could only clothe the Chief Police Officer with power if he could show that the delegation (Exh. D3) applied. To be blunt, I think the appellant has drawn this red herring across the path of the court in order that the court would be drawn off the scent. The appellant must be aware that the 1963 delegation would in no way assist his case. The court should brush away the cobweb and show the transaction in its true light. The 1963 delegation being part of the evidence cannot be overlooked. The Chief Police Officer could only have the power of dismissal from the Police Force Commission. Unless it could be shown that the power of appointment had also been delegated to him, his dismissal of respondent must be regarded as void and inoperative.

Although the reason which has led me to the same conclusion as the learned judge may not be the same, the result is identical. On the evidence the learned judge was right to decide in favour of respondent. Accordingly, I would dismiss the appeal with costs here and in the court below.

Wan Hamzah J. concurred.

Appeal dismissed.

Solicitors: *G. T. Rajan & Co.*